

Law Intelligence.

VICE-CHANCELLOR'S COURT, JULY 24.

(Before Sir L. Shadwell.)

BUNNETT AND ANOTHER V. SMITH.

THIS was a motion by the plaintiffs, as patentees of certain improvements in the construction of iron revolving window-shutters, for a special injunction to restrain the defendant from manufacturing and selling shutters, alleged to be an infringement of their patent. A patent was granted to the plaintiff, Bunnett, in June, 1836, and the specification described his shutters to consist of a series of partially overlapping strips or plates of iron, or other metal, so connected together by a particular description of crank, butt-hinge, that the knuckles of the hinges should be hidden by the partial overlapping of the plates, and without such plates being cut away at the upper edges to let in the knuckle of the cranked hinge, which arrangement the plaintiff claimed as the first feature of his improvements; and the specification also described a plan of applying an endless screw and toothed-wheel to the roller on which their shutters revolved, for the purpose of raising and lowering not only shutters as above described, but any shutters used before the date of his patent, and this arrangement formed the second feature of his improvement; and it was for an alleged infringement of the plaintiff's patent in these two particulars that the plaintiff sought the injunction of the court. The plaintiff in his specification disclaimed the various portions of his shutters and lifting-gearing separately, admitting that each was *per se* old and well-known in principle and in use, previously to his obtaining the grant of Royal Letters Patent, but rested his claims entirely on the combination of the whole. The circumstances which gave rise to this motion were as follow:—It appears that Messrs. W. Cubitt and Co., the eminent builders, of Gray's-inn-road, are engaged in making considerable additions to the banking premises of Messrs. Smith, Payne, and Co., in George-street, and Mansion-house-place, in the City, and it being determined that iron shutters should be adopted, application was first made by the surveyor of the works to the plaintiffs, who furnished drawings of their shutters and gearing, and gave information as to the smallest space within which they would revolve; but the surveyor finding that the space required was more than could be afforded in the building, applied to the defendant, Andrew Smith, of Princes-street, Leicester-square, who is the manufacturer of an improved iron revolving-shutter, and was there shewn specimens of the defendant's shutter, which it was stated would occupy less space than that of the plaintiffs, and exhibited other advantages, by reason of the outer strips or plates of the shutters being connected by a peculiarly constructed chain, consisting of alternate links of wire and flat plates, in lieu of the crank-butt-hinge of the plaintiffs; the shutters being raised and lowered by means of an endless screw and tooth-wheel, similar in principle to that used by the plaintiffs (which is old and well-known), though differently arranged by defendant, so as to further economise space; and upon looking into the relative merits of both, the surveyor determined on having Mr. Smith's shutters, as being manifestly superior in many respects to the plaintiffs; and Messrs. Cubitt and Co. accordingly gave orders for numerous shutters to be affixed to the windows of the building in

question by Mr. Smith. The work was accordingly proceeded with by the defendant; and in consequence of an intimation from the plaintiffs to Messrs. Cubitt and Co. that legal proceedings would be taken by them against the defendant for an infringement of their patent, he (the defendant), on the first day of July, wrote them a letter, denying that he was infringing their patent, and asserting his right to manufacture and affix shutters and gearing on his own principle, as being wholly distinct from theirs, and greatly superior; also challenging them to try the question of law at the next Surrey assizes, or by arbitration, and offering to afford every facility for effecting that object with as little loss of time as possible. This was, however, not accepted by the plaintiffs, who preferred to file their bill in Chancery against defendant, and in such suit to adopt the present motion. It was contended by Mr. Bethell, with whom was Mr. Bacon on the part of the plaintiffs, that the chain of the defendant was a colourable and evasive imitation of the hinge of the plaintiffs, as claimed under the first head of their patent, and that the lifting gearing used by the defendant was also a colourable and evasive imitation of the lifting gearing claimed under the second head of their patent; on the other hand it was contended by Mr. Stuart and Mr. Thomas Turner on behalf of the defendant, firstly, that the plaintiffs patent was altogether bad and invalid on several grounds, and that therefore the plaintiffs could not be entitled to the interference of the Court, but should be left to their remedy at law; secondly, that even if the patent was good, the defendant's chain was in nowise similar, either in appearance, principle, or effect, to the crank butt-hinge of the plaintiffs, but infinitely superior in point of strength, security, durability, and economy of space, as was evidenced by the selection of Messrs. Cubitt, and therefore could be no infringement; thirdly, that the lifting gearing of the defendant, although similar in principle to the plaintiffs, was differently arranged, and so as to produce a much more beneficial result, and therefore was no infringement of the plaintiff's patent; and lastly, that inasmuch as the plaintiffs had specified, for a particular combination of old parts, they were not entitled to, nor could they restrain the defendant from using any of the respective parts unless he also used the whole. Numerous affidavits of scientific gentlemen and others were put in by both sides and read, and various models, shewing the relative constructions and arrangements of each party were exhibited, and amongst the evidence brought forward by the defendant to shew the non-existence of novelty in the plaintiff's patent, were affidavits to the effect, that iron revolving-shutters of a similar construction to the plaintiff's fastened by hinges on the same principle, made in nearly the same particular manner, were in use long prior to the date of the plaintiff's patent. Also the particular description of machinery used for raising and lowering the plaintiff's shutter, and claimed by him, in his specification, was patented, and in use about thirty-six years ago for closing and opening window shutters. And in shewing that the plans adopted by the defendant were not the same as claimed by the plaintiff, it was demonstrated that they were essentially different in construction and effect, although producing the same result, but in a superior manner, which creates alone a difference.

His Honour the Vice-Chancellor said, that where a patent was found to have existed for a period of eight years without any dispute, it was not the habit of the Court to scan very narrowly the expressions used in the specification, and to affirm that because the language was not as clear as it might be, that therefore the patent was bad. The long acquiescence of the public rather afforded *prima facie* evidence that the patent was good. But what pressed upon his mind was, whether the plaintiff had not so described the operation by which a part of the invention was managed, as in effect to permit the defendant to do what he contended the patent left him the right to do. There appeared to his Honour to be a difference in the mode by which the operation of winding up was effected in the two inventions, and it appeared to his Honour that the whole scheme of the thing was to make a succession of hinges, which were so placed that the successive lateral bars lapped over

each other, and thus concealed what his Honour might call the cardinal virtues of the whole thing. The second part of the specification regarded the rolling up of the shutter so constructed, and this was effected by "the revolving power of one hinge being made to depend upon a piece of the next hinge." Now, in the defendant's alleged piracy his Honour saw a different piece of machinery, for instead of making the revolving power of one hinge, according to the plaintiff's specification, depend on the adjoining hinge, the defendant did not make his hinge come in contact with the next hinge. It might be for a jury to say whether this were an infringement of the patent or not, but his Honour was not called on to decide such a question on a motion of this sort. It was the custom of the Court in granting injunctions to do as little injury as possible, and therefore he thought the proper course was to make no order on the motion, but let the plaintiff proceed forthwith to establish the validity of his patent in an action at law, as proposed by the defendant previous to this application for injunction.

The case occupied the Court for five hours, and excited great interest. Amongst the auditors, many scientific and practical gentlemen engaged in the engineering and building professions were observed.

CHURCH-BUILDING INTELLIGENCE, &c.

York Minster was re-opened on Sunday, the 7th instant, having undergone a complete restoration.

The consecration of the new church at Yeadon, near Leeds, by the Bishop of Ripon, took place on the 19th inst.

The intended Roman Catholic cathedral at Bristol, which has long remained in an unfinished state, is announced for sale.

RAILWAY INTELLIGENCE.

Important Railway Meeting at Banbury.—A most important meeting took place on the 11th inst. The Messrs. Stephenson (engineers of the London and Birmingham Railway), Mr. Brunel (engineer of the Great Western Railway), and most of the influential inhabitants of the town and neighbourhood, numbering about eight hundred, were present. The first speaker, Mr. Elgie, of Worcester, advocated the adoption of a line from the terminus of the Great Western Railway at Oxford, to Wolverhampton, through Worcester and Banbury; the second, Mr. Barlow, advocated the extension of the Great Western line from Oxford to Rugby, through Banbury; the third, Mr. Carter (who represented the London and Birmingham company), advocated a line from Weedon to Worcester, passing near Farnborough, through Banbury to Oxford; the fourth, Mr. Hodgson, of Stockton, spoke in favour of a line from Oxford to Banbury, through Farnborough, Southam, Leamington, and Warwick, and thence to Birmingham direct. The proposition of the second speaker was carried without one dissentient voice, which virtually included that of the first, and we may now safely augur, from what transpired at the termination of the meeting, that ere long, under the same patronage, the fourth proposition will be carried into effect.—*Warwick Advertiser*.

Rival Railways to Ashton.—The great contest which has been proceeding in Parliament during the whole session between the Manchester and Leeds Railway and the Manchester and Sheffield Railway, in reference to the two Ashton lines, has at length been brought to a conclusion, the House of Lords having confirmed the decision of the Commons in favour of both the Ashton-under-Lyne and Stalybridge Branch Bill, and the Ashton, Stalybridge, and Liverpool Junction line. The Sheffielders are the defeated party in the contest, they having opposed the passing of the Liverpool Junction, as vitally endangering the prosperity, not merely of their Ashton branch, but also of their main line itself. To the Manchester and Leeds Company, many reasons combine to render the victory they have achieved one of paramount importance.